



MEMORANDUM

DATE: June 25, 1984
TO: DLPC/Permits - S. Springer
FROM: V. Yang - Enforcement Programs *V. Yang*
SUBJECT: Evaluation of Sections 39(c) and 39(i) of the Act Concerning
Buerkett 31st Street Landfill (LPC #16782576)

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The Agency's evaluation of the pending permit application for the expansion of the Buerkett 31st Street Landfill operated by Merle Buerkett should implement the provisions of Section 39(c) and 39(i) of the Act as the basis for denying this permit application. Merle Buerkett has been a named respondent in three enforcement actions filed before the Illinois Pollution Control Board in which final orders were issued against Buerkett for improper operations of a landfill. (See Attachments A-1 through A-3):

1. IEPA v. Clay Products, Merle Buerkett et al., PCB 871-4, June 23, 1971.
2. IEPA v. Merle Buerkett and Harold Cline, PCB 77-294, April 27, 1978.
3. IEPA v. Capital City Land, Inc., Merle Buerkett et al., PCB 81-182, September 15, 1982.

In all cases, the Board found Buerkett in violation of the Chapter 7 Solid Waste Rules and Regulations for failure to comply with the daily, intermediate, and/or final cover requirements. The Board also imposed penalties of \$500.00, \$250.00, and \$3,000.00 against Buerkett and further stated that "repeated violations of rules intended to protect the public from the dangers of improper waste disposal ought to bring much higher penalties than an initial violation." (Concurring Opinion in IEPA v. Capital City, Inc. et al., PCB 81-182.)

Further enforcement action was initiated against Buerkett in December, 1982 for insufficient final cover and improper closure of the Buerkett No. 2 and Buerkett Annex sites located west of Dirksen Parkway in the southeast section of the City of Springfield. In a December 3, 1982 Enforcement Notice Letter, Buerkett was notified of potential enforcement action for his failure to provide adequate final cover and to monitor and control leachate at these two sites (See Attachment A-4). This action was initiated at the request of the DLPC Field Operations Section for the Central Region which had sent five (5) Compliance Inquiry Letters (CIL) to Buerkett beginning in September, 1980, concerning final cover violations at these sites. These deficiencies were eventually corrected

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in the summer of 1983 through a voluntary compliance program developed by the Field Operations Section and Enforcement Programs Section. However, Field Operations Section indicates that since the fall of 1983, the active portion of the 31st Street site has been in violation of the daily and intermediate cover requirement of Chapter 7, Rule 305. This continued pattern of deficient operations has resulted in odors emanating from the site, vector problems, and blowing litter onto adjacent highways and State of Illinois property.

It should be noted that during previous pre-enforcement negotiations in December, 1982 through the summer of 1983, Buerkett had stated his intention to purchase adjoining property as a source of additional cover material. His failure to take such action has resulted in the existing unsatisfactory condition of the 31st Street Landfill. Buerkett's failure to purchase this property also reflects a chronic disregard towards the Act and its requirements and continuance of bad faith efforts whenever actions are required for compliance. This attitude is particularly evident in Buerkett's history of landfill operations: the Board and this Agency consistently cited Buerkett for his failure to provide adequate cover and for other related deficiencies such as blowing litter and odors.

Given the operating history of Merle Buerkett, the statutory requirements of Section 39(i)(1) justify final action by the Agency to deny the pending permit application. The Agency is also restricted from granting a permit under Section 39(a) of the Act and Rule 207 of IPCB Chapter 7 if the applicant cannot demonstrate or prove that the landfill will be operated so as not to cause a violation of the Act or its regulations. Although the technical design for the proposed expansion of this landfill may satisfy the requirements of the Act regarding the development and modification of a site, repeated enforcement actions involving Merle Buerkett indicate that this pattern of operating practices cannot assure compliance with the Act. In fact, Buerkett's history of deficient operations would aggravate future environmental problems at the site (i.e., vectors, blowing litter, and increased potential for leachate discharge from the site).

Finally, the Agency is restricted from granting a permit under Section 39(c) of the Act which requires submittal of proof by the applicant that the location of a new regional pollution control facility has been approved by the County Board or the Springfield City Council as deemed appropriate for the location of this site. The Act defines "new regional pollution control facility" as "the area of expansion beyond the boundary of a currently permitted regional pollution control facility". The 31st Street Landfill site was permitted for development and operation prior to July 1, 1981; however, the January 1984 supplemental permit application will modify the site by expanding the site beyond its previously permitted boundaries. This request for modification would increase the

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Page 3

current capacity of existing "Pit C" area by adding three (3) refuse lifts and raising the upper elevations of this area to approximately 25 feet above the previously permitted elevations (i.e., Drawing No. 74-113 RPC). This proposed vertical expansion of the site would subject the Buerkett 31st Street Landfill to the local zoning approval for "new regional pollution control facility" as recently mandated by the Circuit Court of the 19th Judicial Circuit, Lake County, Illinois in Village of Antioch vs. IEPA and Waste Management of Illinois, Inc., General No. 83-CH-454, April 23, 1984. (Attachment B)

The applicant has the right to appeal any final action of the Agency if the Agency decides to deny the pending permit application for this site. If Buerkett elects to take such appeal action, it is appropriate for the Board to decide if the Agency's decision is based upon a reasonable interpretation of the Act, current judicial findings, and the facts of this matter.

VY:ct/1193D.2-4

cc: DLPC/FOS - Central Region
DLPC/Division Files

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EPA - DLPC
STATE OF ILLINOIS

ILLINOIS POLLUTION CONTROL BOARD

June 23, 1971

ENVIRONMENTAL PROTECTION AGENCY)

v.)

PCB # 71-41

CLAY PRODUCTS CO. et. al.)

Larry R. Eaton for the E.P.A. Agency

James T. Moham and Alfred B. LaBarre for the Respondent

Opinion of the Board (by Mr. Currie):

This complaint, like that in EPA v. Sauget, # 71-29 (decided May 26, 1971), charges the respondents with numerous violations of the regulations and of the statute with regard to the operation of a landfill for solid waste disposal. As in Sauget, we find the evidence establishes several of the charges and fails to establish others. We order that violations cease and a money penalty be paid.

The landfill in question, located in Springfield, is admittedly owned by respondent Clay Products and operated under lease by respondents Buerkett and Hinds. In order to assure that the owner exercises care that improper operations do not occur on his property, we think it appropriate that the prospective provisions of our order apply to it as well as to its lessees.

Count 3 of the complaint alleges open dumping in violation both of section 21 of the Environmental Protection Act and of rule 3.04 of the Rules and Regulations for Refuse Disposal Sites and Facilities (hereafter "Landfill Rules"), adopted by the Department of Public Health in 1966 and effective by virtue of section 49 (c) of the statute. Open dumping is a catchall term that embraces a number of specific infractions alleged elsewhere in the complaint. In light of our findings on these more specific counts we do not find it necessary to decide whether or not they also constitute open dumping.

Count 4 alleges open burning. Although deliberate burning was denied (R. 371), respondents conceded that on two occasions when EPA inspectors were on the premises fires were in progress, started, it is said, by discarded cigarettes (R. 371). The evidence is that some effort was made to cover the burning material (R. 65, 372) but that in one instance the fire smoldered for twelve hours (R. 380) and that no effort was made to extinguish it while the inspector was present (R. 63). As we held in EPA v. Cooling, # 70-2 (December 9, 1970), the statute and the regulations are not limited to deliberate violations. Care must be exercised to prevent fires from occurring and to extinguish them if they do. We think by exercising proper care the respondents here could have prevented the discard of lighted cigarettes and

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ATTACHMENT A-1

could have ended the fires more quickly. Respondents have caused or allowed open burning.

Count 5 charges the absence of convenient sanitary facilities for employees working at the landfill, in violation of Rule 4.03 (c). But the evidence is that adequate facilities are provided at the company's office, variously described as 100 yards from the landfill gate (R. 373) and as 1,000 feet from where dumping took place (R. 88). As in the Sauget case, we find these facilities sufficient. We cannot expect toilets every thirty feet on a landfill site.

Count 6 alleges that access to the site has been permitted "at all hours of the day", in violation of Rule 5.02. But that rule does not limit hours of operation; it forbids access when there is no employee on the site. The allegation is fatally deficient.

Count 7 alleges that refuse has been dumped over a "large impractical area", contrary to Rule 5.03. The evidence on this issue is conflicting and largely subjective. Respondents testified the area open at one time was generally kept to a width of 50 to 100 feet (R. 382, 399), that the area can be and is adequately handled by their equipment (R. 399), that anything much less would cause delays in unloading trucks (R. 320). An Agency inspector testified that he had observed a working area roughly 100' x 75' to 100' (R. 164) and that in his opinion this area should have been reduced by one third to one half because it was too large to be covered in a day by the equipment available (R. 171, 181-82). We recognize the desirability of keeping the working area small, as EPA's witness urged, not only to facilitate cover but also to reduce blowing material and to lessen the attraction of pests (R. 182). But on the present record we do not find sufficient evidence that the area worked was overly large.

Count 8 alleges that unsupervised unloading has been allowed, that no portable fences were used to prevent material from blowing, and that the area was not policed to collect scattered material, all in violation of Rule 5.04. The proof is clear that on one occasion a truck was unloaded while no employee was on hand (R. 103). Such a violation creates obvious risks of improper disposal. It is the duty of the owner and operator to prevent such problems by providing supervision at all times. Moreover, it is clear that until recently there were no portable fences for use when conditions required them to restrain blowing material (R. 107, 166). There was some suggestion by respondents that this provision applies only when there is a risk that material will be blown beyond the property line (R. 139), but the suggestion lacks merit. The owner and operator are bound to keep the site itself from becoming unnecessarily unsightly, and the regulation specifically requires fencing to avoid material blowing from the "unloading site", in order to keep the refuse where it is dumped. There was also testimony that blowing litter had not been collected (R. 108). Violations of Rule 5.04 were therefore shown.

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Count 9 charges a failure to spread and compact ~~solid~~ refuse as required by Rule 5.06. There was evidence that refuse on one occasion was left as deposited without being spread or compacted (R. 104-05, 109). The Rule requires that refuse be spread and compacted "as rapidly as refuse is admitted to the site". The rule is clear; equipment must be operating immediately upon deposit of refuse. A violation was shown.

Count 10 alleges failure to cover refuse at the end of each working day as required by Rule 5.07. Violations were clearly shown. First, there was proof that recognizable refuse items remained uncovered for two consecutive days (R. 40, 67-68, 79, 82-83, 109-110), as in the Sauget case. Second, there was testimony that some refuse requiring cover lay exposed, and that other lay inadequately covered, some of it in water or in liquid waste (R. 32-33, 113-14, 116-17, 168, 189-90, 206, 211), since before the dates alleged in the complaint (R. 95-96, 110, 137). While the original failure to cover these old items as the refuse was deposited was not charged in the complaint, the duty to cover is a continuing one extending to "all exposed refuse" at the end of each day.

Count 11 alleges the discharge of hazardous liquids at the landfill site without the approval required by Rule 5.08 (see R. 113, 208, 359). The respondents demonstrated approval by the Department of Health for the deposit of oil wastes in Impoundment No. 1, where most of the liquid waste was observed (R. 63-64, 113, 359, 388, 412, 434 and Ex. R. 3-1). Two Agency witnesses testified to oil in a second impoundment that the respondents asserted was not used for this purpose (R. 167-68, 179-80, 183-84, 208, 359, 388). Whether using two pits for oil would violate the Health Department's order to "contain the dumping of the hazardous materials received from Sorco Oil and Refining Company in a separate pit" we need not decide, for the undisputed evidence by one Agency witness was that an oily liquid had also been seen on the ground in the vicinity of Impoundment No. 1 (R. 208-09). The presence of this waste in April of 1971 gives rise to the inference it was put there sometime since the preceding October. Whether or not the respondents put it there, they had the obligation, as in the case of open burning, to prevent others from doing so. The violation is established. All oil deposit has now ceased because the Agency has refused to renew permission (R. 412-14).

Count 12 alleges the absence of rodent control under Rule 5.09. As we held in Sauget, proper cover is a type of rodent control that is always required. But further controls are necessary only "as directed by the Department" (now the Agency), and since it was stipulated there has been no such direction in the past (R. 121), there is no proof of violation.

Counts 13 and 14 allege improper salvage operations and soot-icing, in violation of Rules 5.10 and 5.12 (a). The relation between

salvaging and scavenging is not altogether clear; suffice it that on one occasion the undisputed testimony is that an unidentified man was seen manually sorting dumped refuse (R. 122), which is flatly forbidden. It is the owner's and operator's duty to prevent such activities.

Count 15 alleges that refuse has been disposed of in standing water in violation of Rule 5.12 (c). There is much evidence that refuse was seen in water (R. 32-33, 206), and this evidence was relied on above to show a violation of the cover requirements. But Rule 5.12 (c) requires a showing that refuse was put into the water; here we cannot infer either that the water was there before the refuse (R. 64) or that the deposit was chargeable to these respondents (R. 72). This is not to say this type of violation can be proved only by eyewitnesses to the dumping itself, but we find the record inconclusive in this case. See *EPA v. Amigoni*, PCB # 70-15, (February 17, 1971). There was however, proof that on one occasion burning refuse was pushed into water during an effort to put it out (R. 45, 379). This seems an undesirable way to combat fire, in light of the regulation; but we cannot say it is never a permissible choice between two evils.

Count 16 alleges that inadequate measures have been taken to prevent contamination of ground and surface waters, in violation of Rule 4.02 (a) and of sections 12 (a) and (d) of the Act, which prohibit water pollution and water pollution hazards. There is proof that, as the result of leaching through refuse (R. 285), water impounded on the site is high in oxygen-demanding materials and total solids,¹ (R. 274-75, 279-82), so that its discharge to stream or aquifer might cause pollution, and there is proof that in one impoundment the water level was near to overflowing (R. 191-92, 367). But there is insufficient proof that any water escaping from these ponds would be likely to reach either stream or aquifer (R. 192, 242-43, 278, 297, 312, 327, 361, 367-68), and consequently we find no violation in this regard. We do think respondents would be well advised in order to escape future complaints to avoid the mixing of refuse and water on their premises.

Count 17 alleges unsightly and improper operation in purported violation of section 20 of the Act. But that section forbids nothing; it is a statement of policy for use in interpreting the operative sections of the Act.

In sum, we find violations with respect to open burning, unsupervised unloading, spreading, compacting, and covering, fencing, the deposit of liquids, scavenging, and the collection of scattered materials. The testimony of a County Health inspector that the site was generally well operated (R. 319-65) does not contradict EPA's case, but it has weight in mitigation. We are told by EPA that operation has since improved in many respects (R. 130-131). We shall order that no further infractions occur, and to deter future violations we shall assess a penalty of \$500. The sum is smaller than in *Sauget* and earlier cases, for the violations appear less serious.

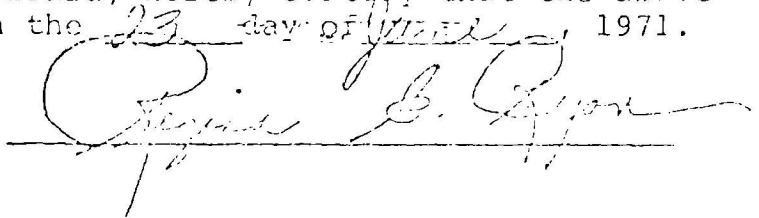
1. Respondent's attempt to exclude several test results on the ground the Agency's witness had not performed the tests herself. For reasons given by the hearing officer this motion was properly denied (R. 264-66).

This opinion constitutes the Board's finding of fact and conclusions of law.

ORDER

1. Clay Products Co., Merle K. Buerkett, and Lowe G. Hinds shall cease and desist from violations of the Environmental Protection Act and of the Rules and Regulations for Refuse Sites and Facilities, as follows:
 - a) No open burning shall be allowed.
 - b) No unloading shall be permitted without supervision.
 - c) Refuse shall be spread and compacted as rapidly as it is admitted to the site.
 - d) Refuse shall be covered daily as required by the Rules.
 - e) Any exposed refuse presently on the site shall be covered as required by the Rules.
 - f) Portable fences shall be provided whenever weather conditions require in order to reduce the scattering of litter, and scattered litter shall be collected.
 - g) The discharge of liquids shall not be allowed except as shall be authorized by the Agency in the future.
 - h) Scavenging shall not be permitted.
2. Merle K. Buerkett and Lowe G. Hinds are jointly and severally ordered to pay to the State of Illinois on or before July 1, 1971, the total sum of \$500 as a penalty for the violations described in the Board's opinion.

I, Regina E. Ryan, Clerk of the Board, hereby certify that the above Opinion and Order was entered on the 23 day of July, 1971.



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JACOB D. DUMELLE, CHAIRMAN
OAK PARK, ILLINOIS

IRVIN G. GOODMAN
MEDINAH, ILLINOIS

DONALD P. SATCHELL
CARBONDALE, ILLINOIS

STATE OF ILLINOIS
POLLUTION CONTROL BOARD

309 WEST WASHINGTON STREET SUITE 300

CHICAGO, ILLINOIS 60606

TELEPHONE
312-793-3620

NELS E. WERNER
CHICAGO, ILLINOIS

JAMES L. YOUNG
SPRINGFIELD, ILLINOIS

May 1, 1978

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OFFICE OF THE DIRECTOR

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Mohan, Alewelt and Prillaman
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Mr. Roger E. Ryan
Londrigan and Potter, P.C.
1227 S. Seventh Street
P.O. Box 399
Springfield, Illinois 62705

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EPA - D.L.C.
STATE OF ILLINOIS

RE: PCB77-294, EPA v. MERLE BUERKETT AND
HAROLD CLINE

Enclosed please find a certified copy of the OPINION AND ORDER
of the Board adopted on April 27, 1978 for the above captioned
matter.

Very truly yours,

Christan L. Moffett

Christan L. Moffett
Clerk of the Board

Enc.

cc: Environmental Control Divisions, Illinois Attorney General
Illinois Environmental Protection Agency
Hearing Officer: Mr. Walter L. Oblinger

ATTACHMENT A-2

ILLINOIS POLLUTION CONTROL BOARD
April 27, 1978

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 77-294
)
MERLE BUERKETT AND HAROLD CLINE,)
)
 Respondents.)

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle):

This matter comes before the Board on a November 10, 1977 Complaint alleging failure to apply final cover at a solid waste management site in violation of Rules 301 and 305(c) of Chapter 7: Solid Waste Rules and Regulations and Section 21(b) of the Act. Because active use of the site terminated in 1970, the Complaint also alleges a violation of Rule 5.07 (b) of the Department of Public Health Rules and Regulations for Refuse Disposal Sites and Facilities and therefore Section 49(c) of the Act.

The site in question is located on approximately 20 acres in an unincorporated area of Sangamon County near Springfield. The site is southwest of the Sangamon River and across from Carpenter Park; Sugar Creek flows by the southwestern boundary of the site.

The site was operated as a refuse disposal facility from approximately 1967 to 1970 by Respondent Buerkett. An agency inspection on August 4, 1971 showed that the site was not operating, that one of two entrances to the property had been closed, and that 10 to 15 acres had been used to dispose of concrete, wood ties, and miscellaneous articles. Several abandoned cars and trucks were also on the site. The operator of the site did not secure an Agency permit or a Department of Public Health permit prior to operating the site.

A disproportionate part of the record was devoted to consideration of the ownership of the site. This consideration was complicated by the fact that a circle drawn on the plat sheet included territory greater than the landfill site. The Board, after considering the evidence, concludes that a substantial portion, if not all, of the site was owned by Respondent

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STATE OF ILLINOIS

Cline during the period of active operation. Respondent Cline admitted he owned the site by giving an oral description of the property to Agency representatives. He accompanied Agency representatives on their inspections of June 1, 1973, June 26, 1973 and July 12, 1973 and admitted on June 1, 1973 to Agency representatives that he had allowed dumping at the site by persons other than Buerkett. Though mindful of the hearsay aspects of this evidence, the Board feels that it has been satisfactorily established that Cline was the owner of the disposal site.

Agency representatives made inspections during 1971 on August 4th and 8th, during 1972 on July 6th and 10th, and repeatedly during 1973. On July 12, 1973 Cline was informed of the cover requirements and a July 17, 1973 inspection shows that some cover had been placed on the northern part of the property. At a March 14, 1974 inspection, it appeared that more fill had been placed and compacted on the north side of the property and some cover had been placed in the southeastern section. At an August 16, 1975 meeting with Buerkett, he admitted to Agency representatives that he had done some filling. An August 23, 1975 inspection shows that a double wide trailer had been placed on the southwest area of the site; an August 2, 1976 inspection showed that a second trailer had been moved to the West central portion of the site. The record shows that residents of one of these trailers purchased a portion of the landfill site requiring cover.

It appears from the record that while some of the area has been covered, no area on the site has a full two feet of compacted cover and one area has no cover. Soil borings conducted by the Agency on August 2, 1976 and August 3, 1977 show samples ranging from no cover to approximately one and a half feet of cover. The record shows that there is some cover material at the site but it is probably not adequate to meet the requirements of Rule 5.07(b).

The Board finds that the failure of Respondents to apply final cover is in clear violation of Rule 5.07(b) of the Department of Public Health rules. The responsibility for compliance with the regulations applies to both the owner of the landfill site and the operator. In considering a penalty for this violation of the Act, the Board concludes that a \$500 fine to be paid jointly and severally by the Respondents is reasonable since no mitigating factors have been presented by them to excuse the undue delay in complying with final cover regulations. The Board also orders that Respondents finish installation of final cover within 120 days of the date of this Order.

LPA - D.L.G.
STA. 17-10-78

In determining whether Respondents have also violated Section 21(b) of the Act, a violation of a regulation adopted by the Board must be plead and proven. Since Rule 305(c) was adopted by the Board after Respondents ceased operation, no violation of that Rule can be found. Since Rule 507(b) was never adopted by the Board, a violation of that rule cannot constitute a violation of Section 21(b) of the Act. Respondents' conduct is actionable through the saving clause in Section 49(c) of the Act.

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER

It is the Order of the Pollution Control Board that:

- 1) Respondents Merle Buerkett and Harold Cline are found to have violated Rule 507(b) of the Department of Public Health Rules and Regulations for Refuse Disposal Sites and Facilities for failure to apply final cover to a solid waste management site owned by Cline and operated by Buerkett from the period six months after terminating operations until July 27, 1974.
- 2) Respondents shall pay as a penalty the sum of \$250. each, payment to be made within 45 days of the date of this order, by certified check or money order to:

State of Illinois
Fiscal Services Division
Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

- 3) Respondent Merle Buerkett shall apply final cover pursuant to Rule 5.07(b) within 120 days of the adoption of this order, and shall post a performance bond of \$7500 to assure correction of the violation within the time prescribed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 27th day of April, 1978 by a vote of 5-0.

RL


Christan L. Moffett, Clerk
Illinois Pollution Control Board

EPA - DLPG
STATE OF ILLINOIS



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JACOB D. DUMELLE, CHAIRMAN
OAK PARK, ILLINOIS

IRVIN G. GOODMAN
MEDINAH, ILLINOIS

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STATE OF ILLINOIS
POLLUTION CONTROL BOARD

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JAMES L. YOUNG
SPRINGFIELD, ILLINOIS

June 9, 1978

Mr. Fred Prillaman
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525 W. Jefferson Street
Suite 400
Springfield, Illinois 62702

RECEIVED IN THE
OFFICE OF THE DIRECTOR

JUN 10 1978 [3]

RE: PCB 77-294, EPA v. Merle Buerkett and
Harold Cline

Enclosed please find a certified copy of the ORDER of the Board
adopted on June 8, 1978 for the above captioned matter.

Very truly yours,

Christan L. Moffett
KD

Christan L. Moffett
Clerk of the Board

Enc.

cc: Environmental Control Divisions, Illinois Attorney General
Illinois Environmental Protection Agency
Hearing Officer: Walter Oblinger

EPA - OLC
STILLING

ILLINOIS POLLUTION CONTROL BOARD
June 8, 1978

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 77-294
)
MERLE BUERKETT and HAROLD CLINE,)
)
 Respondents.)

ORDER OF THE BOARD (by Mr. Dumelle):

On May 25, 1978 the Agency moved the Board to clarify its Order dated April 27, 1978 in this case. Since both Respondents are liable for the violation of Public Health Rule 5.07(b), the obligation to apply final cover and post bond of \$7,500 applies to both of them. Since neither of these Respondents held a Public Health permit, the proper date for expiration of the effectiveness of Public Health Rule 5.07(b) should be July 27, 1973.

On June 5, 1978, Respondent Cline filed a motion for rehearing in this case, and Respondent Buerkett filed a motion to vacate or modify the Board's prior Order, or alternatively, for a rehearing. Both of these motions are hereby denied in all respects.

Since there has been some confusion over the Board's prior Order, the 120 day period referenced in Paragraph 3 shall run from today's date.

The Board's Order in this case dated April 27, 1978 is hereby corrected to read as follows:

- 1) Respondents Merle Buerkett and Harold Cline are found to have violated Rule 5.07(b) of the Department of Public Health Rules and Regulations for Refuse Disposal Sites and Facilities for failure to apply final cover to a solid waste management site owned by Cline and operated by Buerkett from the period six months after terminating operations until July 27, 1973.

EPA - D.L.R.G.

- 2) Respondents shall pay as a penalty the sum of \$250.00 each, payment to be made within 45 days of the date of this Order, by certified check or money order to:

State of Illinois
Fiscal Services Division
Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

- 3). Respondents shall apply final cover pursuant to Public Health Rule 5.07(b) within 120 days of the date of this Order and shall post a performance bond of \$7,500 to assure correction of the violation within the time prescribed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 8th day of June, 1978 by a vote of 50.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board

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STATE OF ILL.

ILLINOIS POLLUTION CONTROL BOARD
September 15, 1982

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

v.

PCB 81-182

CAPITAL CITY LAND, INC., an
Illinois corporation,
MERLE BUERKETT, TOWN AND COUNTRY
BANK OF SPRINGFIELD, TRUSTEE,
an Illinois Bank, BUNN PARK
INDUSTRIES, INC., a dissolved
Illinois corporation, ESTATE OF
MAX RISEMAN, deceased,
MONIKA U. M. WEINER, RICHARD WEINER,
THOMAS FLATTERY, ERNIE L. SCHMIDT,
JOHN DOE, JANE ROE, ED EVANS, JOHN
HOLTMAN, CLARENCE "BUD" GARNER and
NANCY DIMARTINO,

Respondents.

MR. GREIG R. SIEDOR, ASSISTANT ATTORNEY GENERAL, APPEARED
ON BEHALF OF THE COMPLAINANT.

MR. HERMAN G. BODEWES, ATTORNEY AT LAW, APPEARED ON BEHALF
OF RESPONDENT MERLE BUERKETT.

MR. CRAIG RANDALL, LONDRIGAN AND POTTER, APPEARED ON BEHALF
OF RESPONDENTS BUNN PARK INDUSTRIES, INC., ESTATE OF MAX
RISEMAN, DECEASED, MONIKA U.M. WEINER AND RICHARD WEINER.

MR. THOMAS FLATTERY APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by N.E. Werner):

This matter comes before the Board on the November 12, 1981 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). A hearing was held on March 3, 1982 which primarily resolved various legal complexities resulting from the Agency's initial action against the wrong party (i.e., Strata, Inc., a dissolved corporation). Accordingly, an Amended Complaint was filed on April 20, 1982. On April 26, 1982, Respondent Thomas Flattery requested to be dismissed as a party respondent in this action. On May 27, 1982, the Board entered an Order denying Respondent Flattery's motion. A hearing was held on August 4, 1982. The parties filed a Stipulation and Proposal for Settlement on August 9, 1982.

Respondent Bunn Park Industries, Inc., a dissolved Illinois corporation, was involuntarily dissolved on December 1, 1978 by the Illinois Secretary of State for failure to pay an annual franchise tax and failure to file an annual report. Shareholders in Bunn Park Industries, Inc. included Respondents Estate of Max Riseman, deceased, Monika U.M. Weiner (as legatee of Irwin Weiner, deceased), Richard Weiner, Thomas P. Flattery, Ernie L. Schmidt, and unknown persons designated as John Doe and Jane Roe ("Bunn Park Industries Shareholders").

Respondents Ed Evans, John Holtman, Clarence "Bud" Garner and Nancy DiMartino ("Land Trust Owners") are the four sole shareholders of Capital City Land, Inc. and are also the beneficial owners of a land trust, Number 240, which is held by the Town and Country Bank of Springfield, Trustee ("Bank"), an Illinois bank.

It is stipulated that, from September 1, 1973 until August 31, 1974, Respondent Merle Buerkett ("Buerkett") operated, pursuant to a 1-year lease made by Respondent Bunn Park Industries, Inc., a sanitary landfill on a 16-acre tract of land located to the east of Bunn Park near Fox Bridge Road in Springfield, Sangamon County, Illinois. (Stip. 3). Buerkett indicated that he did not deposit refuse on the property after August 31, 1974 and asserted that he performed some final covering operations on the 16-acre tract during the time period from September 1, 1974 until January, 1975. (Stip. 3-4). The Agency noted that, on one or more occasions after August 31, 1974, Buerkett signed inspection reports which indicated that he was the owner and operator of the property. (Stip. 4). The Board notes that Respondent Buerkett has previously been before the Board for improper landfill operations on leased property as early as 1971. EPA v. Clay Products, Merle Buerkett, et al., PCB 71-41, June 23, 1971 (See: Dissenting Opinion of J.D. Dumelle in PCB 71-41); E.P.A. v. Merle Buerkett and Harold Cline, PCB 77-294, 30 PCB 109 (April 27, 1978); (Also see: Order in PCB 77-294 dated June 8, 1978 at 30 PCB 395).

The parties have also stipulated that, from September, 1974 until January, 1975, Respondents Bunn Park Industries, Inc. and Bunn Park Industries Shareholders "caused or allowed the consolidation of refuse from one or more sources at the said 16-acre tract as a central disposal site". (Stip. 3-4). On November 18, 1974, the Agency issued an Operating Permit to Bunn Park Industries, Inc. for a solid waste disposal site on a 49-acre tract "in the North half of the Northwest Quarter of Section 11, and the South half of the Southwest Quarter of Section 2, Township 15 North, Range 5, West of the Third Principal Meridian in Springfield, Sangamon County, Illinois (hereinafter "site")". (Stip. 4). The Operating Permit authorized the handling of demolition and construction waste, as well as other non-putrescible refuse, thereby "excluding garbage and liquid waste unless otherwise specified by supplemental permit". (Stip. 4).

On February 18, 1977, Respondents Bunn Park Industries, Inc. and Bunn Park Industries Shareholders sold the 49-acre site to Respondent Capital City Land, Inc. and to Respondents Land Trust Owners, who placed their interest in the property into Land Trust Number 240, held by Respondent Bank. (Stip. 4).

Insufficient depth of final cover material was placed on various portions of the site during the time period from January 2, 1975 until mid-1980 in violation of Rules 301 and 305(c) of Chapter 7: Solid Waste Regulations ("Chapter 7") and Section 21(b) of the Illinois Environmental Protection Act ("Act"), as it was in effect prior to January 1, 1980. (Stip. 4-5). A subsequent Agency inspection of the site on April 22, 1982 revealed that the requisite final cover had been placed on the property. (Stip. 5). On May 20, 1982, the Agency notified Respondent Ed Evans in writing that the site was properly closed and that the appropriate final cover had been applied. (Stip. 5). However, the parties have noted that, should settling problems occur, the Agency "is not estopped from seeking that additional cover be placed on the site." (Stip. 5).

The Agency states that: (1) leachate was ponded on the property and flowed into a small tributary of Sugar Creek on October 20, 1975; June 30, 1976; July 16, 1976; April 12, 1977; May 11, 1977; August 31, 1977; June 8, 1978; and April 17, 1979; (2) inadequate measures were taken to control leachate (although the problems now have been "fully corrected"); (3) because of damage to a monitoring well, no water sample analysis results were submitted to the Agency from April 1, 1979 until April 20, 1982, although such sampling results were regularly submitted prior to April 1, 1979; (4) no Respondent made any effort to replace or repair the damaged monitoring well prior to April 20, 1982; (5) a monitoring well was installed on the landfill site on May 10, 1982 in compliance with Agency specifications; and (6) the failure to take adequate measures to monitor leachate were in violation of Rules 301 and 314(e) of Chapter 7 and Section 21(b) of the Act (as it was in effect prior to January 1, 1980) and Section 21(a) of the Act (as it went into effect January 1, 1980). (Stip. 5-7).

Respondents Capital City Land, Inc., Land Trust Owners, and Bank state that responsibility for the violations alleged in Counts I through IV of the Amended Complaint is partially within the purview of Respondents Bunn Park Industries, Inc. and Bunn Park Industries Shareholders because the contract for purchase of the landfill in 1977 by Respondents Capital City Land, Inc. and Land Trust Owners "spelled out that final cover, leachate control and leachate monitoring well requirements would be taken care of by sellers, Respondent Bunn Park Industries, Inc." (Stip. 7). The Agency has requested that the Board dismiss Count V of the Amended Complaint and dismiss Respondents Thomas Flattery, Ernie L. Schmidt, John Doe and Jane Roe from the proceeding. (Stip. 7).

The proposed settlement agreement provides that: (1) Respondents Bunn Park Industries, Inc., Bunn Park Industries Shareholders (with the exception of Thomas Flattery, Ernie L. Schmidt, John Doe and Jane Roe), Capital City Land, Inc., Land Trust Owners, Buerkett and Bank have violated Rules 301, 305(c) and 314(e) of Chapter 7 and Section 21(b) of the Act (as it was in effect prior to January 1, 1980) and Section 21(a) of the Act (as it went into effect on January 1, 1980); (2) Respondents Capital City Land, Inc., Land Trust Owners and Bank agree to comply with the requirements of Rule 318 of Chapter 7 and "assert that they took expeditious steps to remedy the leachate and final cover problems with the landfill upon their obtaining the landfill property in February, 1977"; and (3) a stipulated penalty of \$3,000.00 shall be assessed against Respondents Bunn Park Industries, Inc., Bunn Park Industries Shareholders (with the exception of Thomas Flattery, Ernie L. Schmidt, John Doe and Jane Roe), Capital City Land, Inc., Land Trust Owners, and Bank. (Stip. 8-10).

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the settlement agreement acceptable under Procedural Rule 331. The Board will dismiss Count V of the Amended Complaint and dismiss Respondents Thomas Flattery, Ernie L. Schmidt, John Doe and Jane Roe from this action. The Board finds that Respondents Bunn Park Industries, Inc., Bunn Park Industries Shareholders (with the exception of Thomas Flattery, Ernie L. Schmidt, John Doe and Jane Roe), Capital City Land, Inc., Land Trust Owners, Merle Buerkett, and Bank have violated Rules 301, 305(c), and 314(e) of Chapter 7 and Section 21(b) of the Act (as it was in effect prior to January 1, 1980) and Section 21(a) of the Act (as it went into effect on January 1, 1980). A stipulated penalty of \$3,000.00 shall be assessed against the appropriate Respondents.

This Opinion constitutes the Board's finding of fact and conclusion of law in this matter.

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondents, Capital City Land, Inc., Merle Buerkett, Town and Country Bank of Springfield, Trustee, Bunn Park Industries, Inc., Estate of Max Riseman, deceased, Monika U.M. Weiner, Richard Weiner, Ed Evans, John Holtman, Clarence "Bud" Garner and Nancy DiMartino, have violated Rules 301, 305(c) and 314(e) of Chapter 7: Solid Waste Regulations and Section 21(b) of the Illinois Environmental Protection Act (as it was in effect prior to January 1, 1980) and Section 21(a) of the Act (as it went into effect on January 1, 1980).

2. Within 30 days of the date of this Order, the Respondents shall, by certified check or money order payable to the State of Illinois, pay the stipulated penalty of \$3,000.00, for which they shall be jointly and severally liable, to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

3. Count V of the Amended Complaint is hereby dismissed.


4. Respondents Thomas Flattery, Ernie L. Schmidt, John Doe, and Jane Roe are hereby dismissed as Respondents in this proceeding.

5. The Respondents shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on August 9, 1982, which is incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

Chairman Dumelle and Mr. Anderson concur.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 15th day of September, 1982 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
September 15, 1982

| | | |
|--------------------------------------|---|------------|
| ILLINOIS ENVIRONMENTAL PROTECTION |) | |
| AGENCY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB 81-182 |
| |) | |
| CAPITAL CITY LAND, INC., an |) | |
| Illinois corporation, |) | |
| MERLE BUERKETT, TOWN AND COUNTRY |) | |
| BANK OF SPRINGFIELD, TRUSTEE, |) | |
| an Illinois Bank, BUNN PARK |) | |
| INDUSTRIES, INC., a dissolved |) | |
| Illinois corporation, ESTATE OF |) | |
| MAX RISEMAN, deceased, |) | |
| MONIKA U. M. WEINER, RICHARD WEINER, |) | |
| THOMAS FLATTERY, ERNIE L. SCHMIDT, |) | |
| JOHN DOE, JANE ROE, ED EVANS, JOHN |) | |
| HOLTMAN, CLARENCE "BUD" GARNER and |) | |
| NANCY DiMARTINO, |) | |
| |) | |
| Respondents. |) | |

CONCURRING OPINION (by D.B. Anderson and J.D. Dumelle):


We concur in this matter in order to resolve a complex proceeding involving a dissolved corporation, an estate, unknown shareholders, a land trust and others.

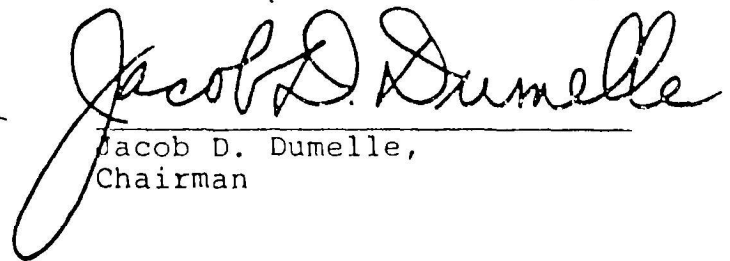
Our concern lies in the fact that one of the respondents is Merle Buerkett. The majority opinion cites two previous cases in which Mr. Buerkett has been judged guilty in 1971 and 1978 by this Board of improper waste disposal operations.

The stipulation is silent about Mr. Buerkett's past conduct. And since the \$3,000 penalty stipulated to here is to be apportioned jointly and severally it seems obvious that this prior conduct was not considered in setting that penalty as regards Mr. Buerkett.


Penalties set by the Board are "to aid in the enforcement of the Act". Repeated violations of rules intended to protect the public from the dangers of improper waste disposal ought to bring much higher penalties than an initial violation. This appears not to have been done in negotiating this stipulated penalty. The Agency should search its own records before

negotiating to find all repeaters. Since a repeater has obviously not been deterred the newer penalties should be many times the first ones for similar offenses.


Donald B. Anderson,
Board Member


Jacob D. Dumelle,
Chairman

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was filed on the 13th day of October, 1982.


Christan L. Moffett, Clerk
Illinois Pollution Control Board



Illinois Environmental Protection Agency - 2200 Churchill Road, Springfield, IL 62706

217/782-5544

CERTIFIED MAIL

ENFORCEMENT NOTICE LETTER

Re: Springfield/Buerkett No. 2 -- LFC 16782516
Springfield/Buerkett Annex -- LFC 16782519

December 3, 1982

Mr. Merle Buerkett
Rural Route #2, Koke Hill Road
Springfield, Illinois 62702

Dear Mr. Buerkett:

The Agency has previously informed you of apparent noncompliance with the requirements of your permits, Section 21(d) of the Environmental Protection Act, and Rules 302, 314 and 314 of Chapter 7 Solid Waste Rules. These charges against you are set forth in Attachment A to this letter.

Please be advised that this matter has been referred to the Agency's legal staff for the preparation of a formal enforcement case. The Agency intends to refer this matter to the Attorney General's office for the filing of a formal complaint.

In accordance with Section 31(d) of the Environmental Protection Act, the Agency will provide you with an opportunity to meet with appropriate Agency personnel in an effort to resolve such conflicts which could otherwise lead to the filing of a formal complaint. This meeting, if it is to be held, is required to be held within 30 days of your receipt of this notice unless the Agency agrees to a postponement.

Please contact Virginia Yang of the Agency's legal staff at 217/782-5544 within seven (7) days if you wish to schedule such a meeting or at any time if you have any questions regarding this matter.

Sincerely,

Robert Kuykendall

Robert Kuykendall, Manager
Division of Land Pollution Control

YV:dks/5837c, 4

Attachment

*cc G. Savage
J. Reisk
Docket*



Attachment A

1. Failure to comply with final cover requirements for Buerkett Annex contours as provided in DLPC Permit No. 1978-3-OP and DLPC Supplemental Permit No. 80-2492 (Section 21(d) of the Act and Rule 302 of Chapter 7).
2. Failure to comply with final cover requirements for Buerkett No. 2 site, Pits A and B as provided in DLPC Permit No. 1975-1-OP (Section 21(d) of the Act and Rule 302 of Chapter 7).
3. Failure to provide adequate measures to monitor and control leachate at Buerkett Annex and Buerkett No. 2, Pits A and B. (Section 21(d) and Rules 313 and 314(e) of Chapter 7).

VY:dks/5837c, 5

STATE OF ILLINOIS)
COUNTY OF L A K E) SS

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

VILLAGE of ANTIOCH

vs.

RICHARD CARLSON, Director of the
IEPA, et al

GEN. NO. 83 CH 454

MAY 02 1984

ORDER

This cause coming on to be heard on Plaintiff's Motion for Summary Judgment and Defendant, RICHARD CARLSON'S Motion to Strike Affidavits, Plaintiff and Defendant, RICHARD CARLSON present by counsel, argument having been heard and the Court being fully advised in the premises and finding as follows:

1. All of those factors necessary for a permanent injunction are present if the expansion is a new regional control facility
2. The increase of volume contemplated by WMI and permitted by the IEPA is a new regional pollution control facility and it was the intent of the legislature to require local siting hearings for such expansion.
3. Any other interpretation would make the legislation a nullity.

Therefore, it is HEREBY ORDERED that:

1. Judgment is entered for the Plaintiff on Counts I and II; Defendant's Motion to Strike Affidavits is denied.
2. Defendant, RICHARD CARLSON, Director of the IEPA, and his successors, agents, servants, employees, and any others acting in concert with them are hereby enjoined from issuing any such permit without following the procedures prescribed by statute for a hearing by the local governmental authorities.
3. The Court further declares that the permit issued by IEPA is set aside and held void.
4. This is a final and appealable Order with no just reason to delay appeal thereof.

ENTER: William D. Block

Judge

Dated at Waukegan, Illinois this

day of _____ 19__.

171-94 4/81



DATE: June 5, 1984

TO: Del Haschemeyer

FROM: Donald L. Gimbel *DHG*

SUBJECT: Possible guidelines to interpret new regional pollution control facilities if Village of Antioch decision is followed.

In our telephone conversation we discussed what guidelines the Agency could utilize to determine what constitutes a regional pollution control facility, if the Agency were to acquiesce in the decision of the Lake County Circuit Court in the Village of Antioch decision. These are my thoughts.

First, there is a question whether a waste treatment facility can constitute a regional pollution control facility. The statute (Section 3(x) of the Act) is ambiguous. Harry Chappel advises me that the Agency has in the past regarded treatment facilities as regional pollution control facilities. However, the facilities in question also stored wastes, and thus could be considered as regional pollution control facilities on their storage feature alone. Bill Seltzer's letter of February 3, 1984, a copy of which is attached, confirms this view. As a result, the Agency seems to be committed to the interpretation that treatment facilities are not regional pollution control facilities. With regard to whether an application includes an "area of expansion beyond the boundary of a currently permitted facility," the following are possible guidelines:

FOR LANDFILLS

An increase in disposal capacity due either to new or different elevations above ground or trenches below ground.

FOR STORAGE FACILITIES

Construction of new buildings, expansion of existing buildings, installation of new tanks, or construction of new or expanded surface impoundments which result in an increase in storage capacity, either within or outside of buildings in the facility, and either above or below ground.

FOR INCINERATORS (and Treatment Facilities, if they are regional pollution control facilities)

Where additional primary equipment is installed which increases the capacity of the facility (this is to be distinguished from the modification of hardware on existing equipment, for which local approval would not be required, even though it would result in increased capacity). In addition, increased surface area would also require local approval, for all regional pollution control facilities, in accord with our present interpretation.

cc: Robert Kuykendall, William Seltzer, Gary King, Harry Chappel

STATE OF ILLINOIS)
) SS
COUNTY OF L A K E)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

VILLAGE OF ANTIOCH, a municipal)
corporation,)

Plaintiff)

vs)

RICHARD CARLSON, Director of the)
Illinois Environmental Protection)
Agency; and WASTE MANAGEMENT OF)
ILLINOIS, INC., an Illinois)
Corporation,)
Defendants.)

GENERAL NO. 83 CH 454

Environmental Protection Agency
Enforcement Section

5-8-84

O R D E R

1701 FIRST AVENUE
MAYWOOD, ILLINOIS 60153

This cause coming on to be heard on Plaintiff's Motion for Summary Judgment and the Defendant, WASTE MANAGEMENT OF ILLINOIS, INC., having heretofore filed a stipulation to have a permanent injunction entered by the Court restraining the Defendant, WASTE MANAGEMENT OF ILLINOIS, INC., and the Defendant, RICHARD CARLSON, being present by counsel and the Court having heard the evidence being fully advised in the premises, and having jurisdiction of the parties and the subject matter and the Plaintiff moving for a voluntary non-suit as to Count III against the Defendant, WASTE MANAGEMENT;

IT IS THEREFORE ORDERED that:

1. The Defendant, WASTE MANAGEMENT, its agents, officers employees, attorneys, successors and assigns and all persons in active concert and participation with them, be and they hereby are, perpetually restrained and enjoined from engaging in, continuing, permitting, encouraging or participating in any way in any

developmental or operational activity related to the vertical enlargement of the Antioch Landfill Site including seeking or receiving any permit to vertically enlarge, in any design, the Antioch Landfill Site.

2. Plaintiff is granted a voluntary non-suit as to Count III and hearing on Plaintiff's Motion for Summary Judgment is continued to May 9, 1984 at 9:15 A.M. in C-305 as to the Defendant Richard Carlson, Director of the Illinois Environmental Protection Agency, on Count I and II.

3. Further, Judgment is entered on behalf of Plaintiff for costs against the Defendant, WASTE MANAGEMENT.

This Order is the command of the Circuit Court of Lake County and violation thereof is subject to the penalty of the law.

ENTER:

WILLIAM D. BARK

J U D G E

Dated this _____ day of April, 1984
at Waukegan, Illinois.

RECEIVED

FILED